THE HON'BLE MS JUSTICE G.ROHINI

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WRIT PETITION NO: 11871 of 2005

Dated: 26-04-2006

Between:

Islamic Education Academy,

..... PETITIONER

AND

The District Collector,

Krishna District, Machilipatnam and six others.

.....RESPONDENTS

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO: 11871 of 2005

O R D E R:

The petitioner seeks a Writ of Mandamus to declare the proceedings of the first respondent-District Collector, Krishna District, Machilipatnam, dated 16-05-

2005, as arbitrary and illegal.

The petitioner-Islamic Education Academy claims to be a society registered under the Societies Registration Act, 1860 formed for the welfare of the minority community.

It is not in dispute that the Government of Andhra Pradesh, having taken a decision to construct Urdu Ghar-cum-Shadikhanas in all places where minority population is substantial, issued sanction orders for construction of 301 Shadikhanas in the State. Consequent thereto, vide G.O.Ms.No.162 Minorities Welfare (MFC) Department, dated 09-07-1999, the District Collectors were authorised to entrust the work to any Engineering Department among R & B, Panchayatraj and APIIC and also to allot the lands for construction of Shadikhanas. That apart, it was also decided that in case of local people contributing not less than 30% of the cost and the contribution is voluntary, the District Collector may authorise such local committee of minorities to take up construction of Shadikhanas under the supervision of designated Engineering Department. The District Collectors were also directed to issue orders for constitution of committee for the management and maintenance of all matters of Shadikhanas and such Managing Committee shall consist of four local Muslims, apart from one Muslim woman and a representative of Urdu Academy and Local Mandal Revenue Officer as Convener.

The petitioner claims that having considered its request, the Government, vide proceedings, dated 17-01-1999, had allotted Ac.0.18 cents of land situated in R.S.No.228/1 of Machilipatnam for construction of Urdu Ghar-cum-Shadikhana. In pursuance thereof, vide proceedings, dated 18-01-1999, possession was handed over to the petitioner-society. Subsequently, the Government accorded administrative sanction of Rs.15 lakh for construction of Shadikhana at Machilipatnam and accordingly, issued G.O.Rt.No.277, dated 27-09-1999, releasing a part of the amount and informing the District Collector, Machilipatnam that the execution of the Urdu Ghar-cum-Shadikhana would be entrusted to the local committee, after accepting 30% contribution. Accordingly, the Urdu Ghar-cum-Shadikhana was constructed under the technical supervision of the Government Engineers and the same was completed at a cost of Rs.21 lakh, out of which, Rs.6.50 lakh was contributed by the petitioner-society. Thereafter, the Government issued a memo, dated 14-03-2000,

requesting all the District Collectors to take over possession of the completed Urdu Ghar-cum-Shadikhanas from the concerned Engineering Agencies and hand over the same to the committees duly constituted in terms of G.O.Ms.No.162, dated 09-07-1999. In pursuance thereof, the second respondent-District Minorities Welfare Officer, Vijayawada, addressed a letter, dated 30-08-2001, to the petitioner-society informing that the District Collector, Krishna, issued orders proposing constitution of the Managing Committee consisting of the President of the petitioner-society as Chairman, apart from four other local Muslim, and local Mandal Revenue Officer as Convener to manage and maintain the Shadikhana at Machilipatnam in terms of G.O.Ms.No.162, dated
09-07-1999. Accordingly, the committee for management and maintenance of Shadikhana at Machilipatnam was constituted with the petitioner-society and others, as indicated in the letter of the second respondent,
dated 30-08-2001 and since then the affairs of the Urdu Ghar-cum- Shadikhana were being managed without complaint whatsoever.

While so, the impugned proceedings, dated 16-05-2005, were issued by the first respondent-District Collector, Krishna constituting a fresh management and maintenance committee with the respondents 3 to 7 as members purportedly in exercise of the powers under G.O.Ms.No.162, dated
09-07-1999. The said order is under challenge in this writ petition contending *inter alia* that the said order, which was passed merely on the basis of certain proposals made by the Mandal Revenue Officer, Machilipatnam, dated 21-04-2005, is illegal and not in conformity with the G.O.Ms.No.162, dated 09-07-1999. It is alleged that as a matter of fact, the fresh committee was constituted under the impugned order, dated 16-05-2005, at the instance of the local MLA, who is not competent to intervene with the constitution of the committees under G.O.Ms.No.162, dated 09-07-1999. It is also alleged that the respondents 3 to 7 were henchmen of the local MLA, Bandar and none of them was connected with the construction of the Urdu Ghar-cum-Shadikhana much less with any of the Muslim Welfare activities. Hence, the constitution of the fresh management committee under the impugned order, dated 16-05-2005, is wholly illegal and without application of mind to the relevant factors and therefore, the same is liable to be set aside *in limini*.

This Court, while directing Rule nisi, by order, dated 09-06-2005 in W.P.M.P.No.15126 of 2005, granted interim suspension of the impugned order, dated 16-05-2005. Thereafter, the said order was made absolute by order, dated 25-11-2005.

I have heard the learned counsel for both the parties and perused the material on record.

Learned counsel for the petitioner, while reiterating the contentions raised in the writ petition, submitted that as a matter of fact, G.O.Ms.No.162, dated 09-07-1999, under which the constitution of the committees for the management and maintenance of the Shadikhanas was ordered, the term of such committees was not prescribed and therefore, while the committee constituted on 30-08-2001 was still subsisting, the first respondent cannot constitute a fresh committee. Thus, the learned counsel vehemently contends that the constitution of the fresh committee under the impugned order, dated 16-05-2005, was without authority, apart from being contrary to the spirit and object of G.O.Ms.No.162, dated 09-07-1999.

The first respondent-District Collector, filed a counter affidavit in which the fact that a sum of Rs.6.50 lakh was spent as public contribution by the petitioner-society and the construction of the Urdu Ghar-cum-Shadikhana was completed with a total cost of Rs.21.50 lakh, was not disputed. The fact that the petitioner-society had taken up the construction work of Shadikhana under the technical supervision of the Government Engineers was also not disputed. However, it is stated that the petitioner-society had no right over the Shadikhana and it was only under the control of the Government, and the committee appointed by the Government had to look after the matter pertaining to the Shadikhana during its tenure. The fact that in pursuance of the letter of the second respondent, dated 30-08-2001, the committee consisting of the petitioner-society was constituted to manage the affairs of the Urdu Ghar-cum-Shadikhana was also not in dispute. However, it is contended that in view of Government memo, dated 25-01-2001, the term of the Managing and Maintenance Committee was also for a period of two years from the date of constitution, and after its expiry, a new committee has to be formed. Thus, it is pleaded that the tenure of the committee constituted under the letter of the second respondent, dated 30-08-

2001, was already over and therefore, a new committee has been validly constituted by the first respondent under the impugned order, dated 16-05-2005. It is also stated that since the term of the existing committee had already expired, the Mandal Revenue Officer, Machilipatnam sent the proposals for constitution of a new committee and the MLA had sent formal request with the proposed list, basing on which, the first respondent issued the impugned order, dated 16-05-2005. Since G.O.Ms.No.162, dated 09-07-1999, empowers the District Collector to constitute a committee for management and maintenance of Shadikhanas, the impugned order is well within the power of the first respondent and does not suffer from any infirmity as contended by the petitioner.

The respondents 3 to 7, who are the members of the newly constituted committee under the impugned order, dated 16-05-2005, filed a separate counter affidavit on the same lines.

On a perusal of the G.O.Ms.No.162, dated 09-07-1999, it is clear that the District Collectors are authorsised to constitute the Committee for the Management and Maintenance of the matters of Shadikhanas. Though, the structure of such Managing Committee was clearly prescribed stating that it shall consist of four local Muslims, apart from one Muslim woman and a representative of Urdu Academy, and local Mandal Revenue Officer as Convener, the G.O.Ms.No.162, dated 09-07-1999, was silent about the term of the committee.

However, the learned Government Pleader, while placing reliance upon the Government Memo, dated 25-01-2001, vehemently contended that the tenure of the committees constituted under G.O.Ms.No.162, dated 09-07-1999 shall be for a period of two years from the date of the constitution.

On the other hand, the learned counsel for the petitioner contends that the Government memo, dated 25-01-2001, said to have been issued by the Principal Secretary to the Government of Andhra Pradesh has no statutory force and cannot over ride the scheme under G.O.Ms.No.162, dated 09-07-1999, which was issued with an object to involve the local people, who had contributed not less than 30% of the cost of the construction of the Shadikhana, in the management and maintenance of such Shadikhanas.

At the outset, it is to be noted that whereas the Government Memo limiting the term of the committees constituted under G.O.Ms.No.162, dated 9-7-1999 as two years was issued on 25-1-2001, the petitioner committee was constituted subsequently by proceedings dated 30-8-2001. However, there was no reference to the Government Memo dated 25-1-2001 and it did not prescribe the term of the committee.

Even assuming that as per Government Memo dated 25-1-2001 the term was limited for a period of two years, admittedly the committee constituted on 30-8-2001 was continued even after the expiry of the said two years from the date of its constitution without any order of extension as such. In the circumstances, I do not find force in the submission of the learned Government Pleader that the term of the committee automatically ceased after expiry of two years from the date of its constitution. Hence, as rightly contended by the learned Counsel for the petitioner, the 1st respondent ought not to have constituted a new committee under the impugned order without terminating the existing committee following due process of law.

That apart, the impugned order shows that the fresh committee was constituted merely on the basis of the proposals received from the Mandal Revenue Officer, Machilipatnam. Nothing has been placed before this Court to show that the committee constituted under the impugned order satisfies the requirements of G.O.Ms.No.162, dated 9-7-1999 either with regard to 30% of the contribution or with regard to the eligibility of the members that they should belong to the same locality.

Viewed from any angle, the impugned order is illegal and not in accordance with G.O.Ms.No.162, dated 9-7-1999.

Accordingly, the impugned order dated 16-5-2005 is hereby set aside and the Writ Petition is allowed. No costs.

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G. ROHINI, J

Dated:26-04-2006

KLP